

**AMENDMENT TO TEMPORARY CONSTRUCTION AND ACCESS PERMIT
CITY OF MILPITAS – ED R. LEVIN COUNTY PARK**

This is an Amendment to the Temporary Construction and Access Permit between the County of Santa Clara and the City of Milpitas approved by the County on December 6, 2005, for the City's construction of waterline improvements within Ed R. Levin County Park (Permit).

RECITALS

Whereas, the County Board of Supervisors has delegated authority to the Director of Parks and Recreation to grant licenses to other public entities on County Property (County Code Section A21-14 and Section 11 of Permit); and

Whereas, to implement the project described in the Permit, the City requires additional Permit area and the County requires that the City conform with the requirements of the California Department of Forestry Memorandum and other related requirements;

Therefore, the parties agree as follows:

SECTION 1: Section 7 of the Permit, Site Conditions, is amended to include the following subsection (j):

j. Staging Area - City may establish an approximate 90' by 90' staging area for Project materials and equipment within the "Possible Staging Area" identified in Exhibit A-1, subject to restoration requirements in Section III of the Permit. City must comply with the California Department of Forestry MOU (Exhibit C) in clearing grasses within the Possible Staging Area.

SECTION 2: Section 8 of the Permit, Notice, is amended to read as follows:

City shall provide any notice relating to Permit activities 48 hours in advance of County's required action. City will provide notice to Senior Park Ranger, Jeff Cossins at (408) 934-9847. Email notification may be provided to jeff.cossins@prk.sccgov.org. If City receives no acknowledgement of receipt within 48 hours, CITY will notify COUNTY at:
Construction Management
Parks and Recreation Department
298 Garden Hill Drive
Los Gatos, CA 95032
(408) 355-2208

All other notices under the Permit will be served personally or by U.S. mail, addressed as follows:

County
Construction Mngmnt.
Parks and Recreation Dept.
298 Garden Hill Drive
Los Gatos, CA 95032

City
City of Milpitas
Greg Armendariz, City Engineer
455 E. Calaveras Blvd.
Milpitas, CA 95035

SECTION 3: Exhibit A of the Permit is amended to include the attached Exhibit A-1.

SECTION 4: The Permit is amended to include the attached Exhibit C, California Department of Forestry Memorandum of Understanding.

SECTION 5: All other conditions of the Permit remain in full force and effect.

The parties have entered into this Amendment effective upon full execution by the parties as reflected below:

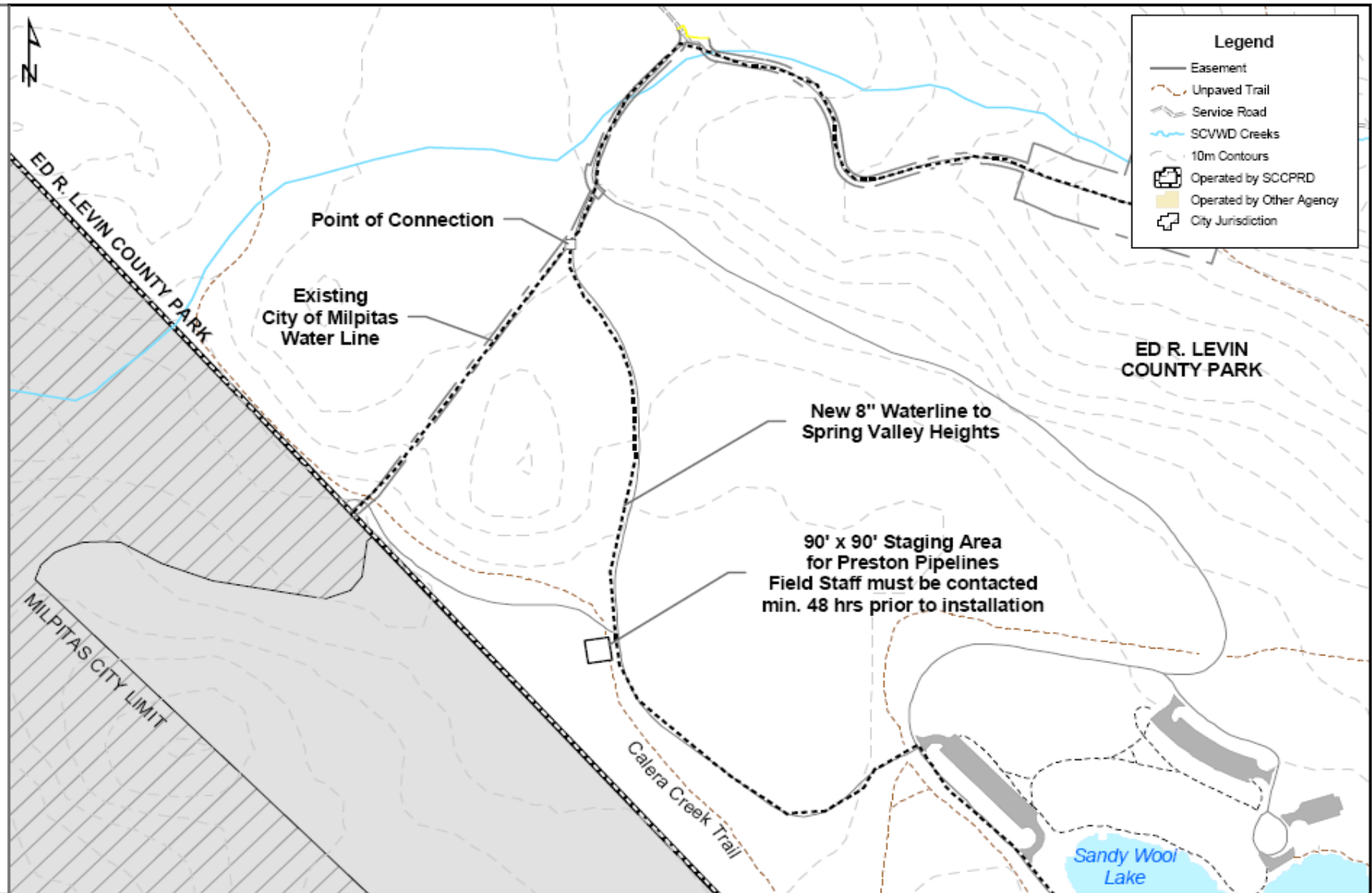
County of Santa Clara

City of Milpitas

Lisa Killough, Director
Parks and Recreation Department
Date: _____

Thomas C. Williams
City Manager
Date: _____

EXHIBIT A-1



**SANTA CLARA
COUNTY PARKS**

This map generated by the County of Santa Clara Department of Parks and Recreation. The GIS files were compiled from various sources. While deemed reliable, the Department assumes no liability.

Title:
Spring Valley Heights Waterline Installation
Staging Area

Date:
May 21, 2007

Comments:

Created By:
John Falkowski

Scale:



EXHIBIT C

Memorandum of Understanding with California Department of Forestry

Santa Clara County
Fire Prevention
Operational Procedure

When Using Internal Combustion Engine
And Other Equipment
Which May Cause Flame or Sparks in
Dry Grass, Brush or Forest
Covered Areas of the County

In Cooperation With
The California Department of Forestry
And Fire Protection
Santa Clara Unit

May 14, 2001

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1. Procedural Objective

It is the objective of the County of Santa Clara to comply with all codes, regulations, and ordinances pertaining to fire prevention standards.

This document serves as a procedural guideline for ALL Santa Clara County Departments, performing operations INVOLVING COMBUSTIBLE ENGINE EQUIPMENT OR EQUIPMENT WHICH CAUSES SPARKS OR FLAMES within the grass, brush or forest covered areas of the Santa Clara County.

All Departments are encouraged to complete as many projects in the grass, brush or forest covered areas of the County prior to the curing of flammable vegetation whenever practical.

2. Fire Season Defined

- (a) It is the intent of this policy to implement the most cautious measures during "Fire Season".
- (b) For purpose of this document, Fire Season is defined as
 - (II) May 1 through November 30 of any calendar year, or
 - (III) Anytime weather monitoring indicates that relative humidity is less than 30%.

This policy will be implemented fully during May 1 through November 30 irrespective of weather monitoring results, and will be extended into other days and months of the year anytime relative humidity is less than 30%.

- (c) In non-fire season, wind speed above 10 MPH will in itself not stop operations. In fire season, sustained wind speed above 10 MPH will stop operations

3. Operational Procedures and Required Equipment

DURING FIRE SEASON, OPERATIONS Involving use of combustible engines or equipment which produce flames or sparks which will be CONDUCTED WITHIN OR ADJACENT TO NON-IRRIGATED GRASS, BRUSH OR FOREST AREAS WILL BE CONDUCTED USING THE FOLLOWING RULES:

- (a) Prior to commencement of operations:
 - (II) Staff will secure the current fire conditions from Santa Clara County Communications at (408)299-2507.

No OPERATIONS shall occur within 24 hours of a predicted Red Flag day AS DETERMINED BY the National Weather Service.

- (III) Staff will assess current weather conditions at the planned site of operation every two hours:

In the event one of the following readings is noted, Operations shall not begin, or will cease IMMEDIATELY!

THE RELATIVE HUMIDITY IS AT OR BELOW 30%

SUSTAINED WIND SPEEDS REACH 10MPH

- (IV) If ambient temperature reaches 80 degrees Fahrenheit at any time during the operation, weather samples must be taken hourly.

- (b) Required Equipment

During Fire Season, THE FOLLOWING EQUIPMENT MUST BE IMMEDIATELY AVAILABLE AT the Actual JOB SITE:

- (II) 1 serviceable round point shovel with an overall length of not less than 46 inches
- (III) 1 (5 gallon) water backpack pump fire extinguisher
- (IV) Weather Sampling Device
- (V) Non-Divertible Truck mounted water pump Required

In addition to a backpack water pump, shovel, and weather-sampling device, all high-risk activities must have a non-divertible water pump equipped pick-truck assigned

to the operation. A trained observer that is familiar with the operation, the fire apparatus, the vehicle radio, and the location of the operation must staff the truck. The observer must remain in the immediate area of the truck; and the truck must remain in the immediate area of the activity being monitored.

High Risk Activities include:

Flailing, Disking, Operating Brush Hog Equipment and Grading in heavy brush areas with less than 10' of clearance and other like activities.

(VI) Non-Divertible Truck mounted water pump Not Required

Low to Moderate risk activities do not require a non-divertible water pump equipped pick-truck. However, a shovel, 5-gallon backpack water pump, and weather-sampling device must still be immediately available at the actual job site.

Low to Moderate Risk Activities include:

Weed-whacking, Torch Cutting, Spot Welding, High Wheel Mowing, Generators, Mowing light grass immediately adjacent to irrigated lawns where natural fire breaks like roads, creeks or paved paths are present.

(VII) Exempted Activities

It is not required to check weather conditions or suspend operations on red flag days when performing any type of work in or around well-irrigated green lawns or while using a leaf blower. However, shovels and backpack fire pumpers shall be near-by as a precautionary measure.

DURING NON- FIRE SEASON, OPERATIONS CONDUCTED WITHIN OR ADJACENT TO GRASS, BRUSH OR FOREST AREAS WILL BE CONDUCTED USING THE FOLLOWING RULES:

(a) Prior to commencement of operations:

(II) Weather Samples will be taken at the job site

If relative humidity is more than 30% operations can proceed without further weather monitoring or other fire fighting devices.

If original relative humidity reading is less than 30% the preceding operational rules for fire season will be followed.

4. Equipment Inspection and Record Keeping

- (a) Prior to May 1st of each calendar year, Santa Clara County will inspect all combustible engine equipment that is intended for use by the County in or adjacent to any grass, brush, or forested areas within Santa Clara County. Inspected equipment must meet the requirements of section 4442 of the Public Resource Code. Equipment that has not been inspected shall not be used.**

Section 4442 of the Public Resource Code requires that any type of equipment that is powered by an internal combustion engine must be equipped with an approved spark arrestor. This does not include most motor vehicles if, they are equipped with an approved muffler system, routed properly, as described in the Motor Vehicle Code.

- (b) Hired or contracted private equipment must meet the requirements of this plan. Inspection of hired equipment is the responsibility of the County.**
- (c) Santa Clara County will maintain maintenance and inspection records for equipment related to this plan and make them available for inspection.**

5. Applicable Laws and Regulations:

CALIFORNIA HEALTH AND SAFETY CODE REFERENCE SECTIONS:

13001. Causing Fire

Every person is guilty of a misdemeanor who, through careless or negligent action, throws or places any lighted cigarette, cigar, ashes, or other flaming or glowing substance, or any substance or thing which may cause a fire, in any place where it may directly or indirectly start a fire, or who uses or operates a welding torch, tar pot or any other device which may cause a fire, who does not clear the inflammable material surrounding the operation or take such other reasonable precautions necessary to insure against the starting and spreading of fire.

13005. Use of Hydrocarbon Burning Engine Without Exhaust Spark Arrester

Every person is guilty of a misdemeanor who:

(a) Sells, offers for sale, leases, or rents to any person any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels, if either:

(1) It is specifically designed for use in harvesting or moving grain or hay or for use on land covered with any other flammable agricultural crop, unless the exhaust system of the engine is equipped with a spark arrester in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

(2) It is not specifically designed for any of the uses described in paragraph (1) but could be used for any of those uses, unless the person provides written notice to the purchaser or bailee at the time of sale or at the time of entering into the lease or rental contract stating that the use or operation of the engine on any flammable agricultural cropland is a violation of subdivision (b), unless the exhaust system is equipped with a spark arrester in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

(b) Operates or causes to be operated any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels in harvesting or moving grain or hay, or on land covered with any other flammable agricultural crop, unless the engine is equipped with a spark arrester maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

Spark arrester, as used in this section, is as defined in Section 4442 of the Public Resources Code. Spark arresters attached to the exhaust system of engines on equipment or vehicles, as described in this section, shall not be placed, or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material. Motor trucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to the provisions of paragraph (2) of subdivision (a) if the exhaust system is equipped with a muffler as defined in the Vehicle Code.

13007. Any person who personally or through another willfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled or attended by him to escape to, the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire.

CALIFORNIA PUBLIC RESOURCE CODE REFERENCES SECTIONS:

4427. During any time of the year when burning permits are required in an area pursuant to this article, no person shall use or operate any motor, engine, boiler, stationary equipment, welding equipment, cutting torches, tarots, or grinding devices from which a spark, fire, or flame may originate, which is located on or near any forest-covered land, brush-covered land, or grass-covered land, without doing both of the following:

(a) First clearing away all flammable material, including snags, from the area around such operation for a distance of 10 feet.

(b) Maintain one serviceable round point shovel with an overall length of not less than forty-six (46) inches and one backpack pump water-type fire extinguisher fully equipped and ready for use at the immediate area during the operation.

Section 4427 (b) of the Public Resource Code also requires these tools to be carried on each piece of equipment and that they be kept in a serviceable condition.

4442.

(a) Except as otherwise provided in this section, no person shall use, operate, or allow to be used or operated, any internal combustion engine which uses hydrocarbon fuels on any forest-covered land, brush-covered land, or grass-covered land unless the engine is equipped with a spark arrester, as defined in subdivision (c),

maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to

4443.

(b) Spark arresters affixed to the exhaust system of engines or vehicles subject to this section shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material.

(c) A spark arrester is a device constructed of nonflammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that uses hydrocarbon fuels or which is qualified and rated by the United States Forest Service.

(d) Engines used to provide motive power for trucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to this section if the exhaust system is equipped with a muffler as defined in the Vehicle Code.

(e) Turbocharged engines are not subject to this section if all exhausted gases pass through the rotating turbine wheel, there is no exhaust bypass to the atmosphere, and the turbocharger is in effective mechanical condition.

6. CONTACT INFORMATION:

County Communications – Control 12

Weather Conditions

(408) 299-2507

California Department of Forestry and Fire Protection

Morgan Hill Headquarters:

(408) 779-2121

Ask for the ECC during regular business hours

ANY Fire Emergency:

911

CDF/Santa Clara Fire Prevention Bureau:

(408) 779-2121